

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

TAYLOR FARMS OF CALIFORNIA, INC.¹

Employer

and

Case 28-RC-6256

**GENERAL TEAMSTERS, WAREHOUSE
AND HELPERS UNION, LOCAL 890,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, by its amended petition, seeks an election in a unit comprised of all “year-round” Packing Machine Operators (PMOs), Packing Machine Technicians (Techs), and Maintenance Mechanics (Mechanics) employed at the Employer’s Yuma, Arizona facility. The Petitioner’s proposed unit would be comprised of about 74 employees. Contrary to the Petitioner, the Employer contends that the only appropriate unit is a wall-to-wall unit consisting of all the Employer’s hourly employees, which would include not only the PMOs, Techs, and Mechanics, but all production, shipping, quality assurance, sanitation, and utility employees employed at the Yuma facility. The Employer’s proposed unit would be comprised of over 500 employees.

Based upon the reasons more fully set forth below, I find both the petitioned-for unit and the Employer’s proposed unit to be inappropriate. The petitioned-for unit is both under- and over-inclusive. It is under-inclusive in that it consists of Techs, and Mechanics who share a significant – if not identical – community of interest with other Techs and Mechanics who are not sought by the Petitioner. It is over-inclusive in that it contains the PMOs, who share a meaningful community of interest with the remaining Production Department employees who would be excluded from the unit. The Employer’s proposed wall-to-wall unit is also not an appropriate unit, as it would bind together a large number of unskilled, lower-paid, seasonal production employees with a much smaller group of higher-skilled, higher-paid Techs and Mechanics who have a year-round relationship with the Employer and who share no significant community of interest with them.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

At hearing, the Petitioner indicated that it would accept any unit determined by me to be appropriate. Based upon the record before me as a whole, I find that a unit composed of maintenance employees, including Techs and Mechanics, is an appropriate unit. In concluding that a maintenance unit is appropriate, I have relied on such factors as that these employees are separately supervised, earn the highest wages, work unique hours, wear distinctive uniforms, receive more extensive training, and have little or no interaction or interchange with members of the Production Department. In addition, I find it significant that, unlike the majority of production workers, the maintenance employees are regular seasonal employees in that they have a reasonable expectation of returning each year, and are considered by the Employer so hard to replace that they are encouraged, through monetary incentives and free travel, to apply every season for work at the Yuma facility. The record also indicates that a significant percentage of the maintenance employees, in fact, do return every year. These factors also dictate that an election held as soon as practicable would satisfy the dual goals of expeditiously permitting the employees representation and sufficiently insuring maximum employee participation in the election.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. **Jurisdiction:** The parties stipulated that the Employer, Taylor Farms of California, Inc., a Delaware corporation, with an office and place of business in Yuma, Arizona, is engaged in the business of processing fresh vegetables for sale to food service customers. During the 12-month period preceding the hearing in this matter, the Employer, in the course and conduct of its business operations, purchased and received at its Yuma facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Arizona. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.
3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. **Unit Finding:** The primary issue presented in this case is whether a unit comprised of all "year-round" PMOs, Techs, and Mechanics employed by the Employer in

Yuma, Arizona, is an appropriate unit. To provide a context for my discussion of this issue, I will present background facts regarding the Employer's operations, employee complements, production process, supervision, personnel management, wages, benefits, and other terms of employment of the Yuma employees, their degree of skill and common functions, the interchange and contacts between these employees, and to a lesser degree, their uniforms and tools, as well as the case law regarding community of interest, and my conclusions.

A. The Employer's Operations

1. Overview

The Employer is in the business of processing and packing vegetables, primarily for the food service industry. Some produce is packaged in plastic bags, placed in boxes, and shipped; other produce is sliced, diced or chopped, and then packaged in plastic tubs covered by plastic wrapping. The Employer does not grow the vegetables it processes and employs no field workers. The Yuma facility consists of 28 production lines distributed throughout three buildings located on the same site. The largest building houses 16 production lines; the other two buildings house 10-11 and 3 production lines, respectively. The buildings are in close proximity to each other. With the exception of some specialty products, the work performed in all three buildings is virtually identical. Depending on the manpower required to process a particular product, from 15 to 20 employees are assigned to a particular production line. The employees work in two, 8½-hour shifts. The first shift generally begins between 6:00 a.m. and 8:00 a.m. The second shift generally begins between 3:30 p.m. and 5:30 p.m.

In addition to the Yuma facility, the Employer operates a separate vegetable processing and packing facility in Salinas, California. Each facility operates seasonally, based on weather conditions. The Yuma facility operates from mid-November through the end of March/beginning of April, at which time all of the equipment is broken down, loaded on to tractor-trailers, and transported back to Salinas, California. The Salinas facility operates from the first week in April until the middle of November, when the relocation process is repeated. The Employer hires employees independently at each facility, and, at the end of each season, the Employer lays off that facility's entire hourly workforce.

After the annual close of the Salinas operation, to avoid the cost of having to train new employees in certain, more skilled positions, the Employer offers economic incentives to the employees who worked in those positions, to encourage them to apply for work at the Yuma facility. For example, to defray travel and living expenses, the Employer offers many of these employees a fixed daily amount for expenses (per diem). Effectively, 20% of the total hourly employee complement of 790 work both in Salinas and Yuma for the Employer, and about 18% receive a per diem for accepting work at the Yuma facility. I shall refer to these individuals as "dual-facility employees." At the close of the Yuma season, the skilled employees who traveled from Salinas are rehired into their positions at Salinas. Additionally, at the close of the Yuma season, the Employer offers to hire skilled employees from the Yuma employment market into skilled positions at the Salinas facility. It appears that the employee complement, once established at each facility, is relatively stable.

All of the Employer's hourly employees working in Salinas are part of a single bargaining unit represented by the Petitioner. The dual-facility employees who also work at the Yuma facility only represent a fraction of this unit. None of the employees hired at the Yuma facility, including the dual-facility employees, has ever been represented by the Petitioner or any other labor organization while employed at the Yuma facility.

2. The Employee Complements at the Yuma Facility

There are 790 full-time, hourly employees working at the Yuma facility. There are no part-time employees. These employees work in one of six departments, including receiving, production, quality assurance, utility, sanitation, and engineering.

(a) Receiving

There are 24 employees who work in the Receiving Department. Their job duties include unloading raw produce off the trucks and transferring the raw produce to the production lines with forklifts. Approximately 25% of these employees are dual-facility employees, all of whom are paid per diem. Entry-level Receiving Department employees receive a per diem of \$850 per month.

(b) Production

There are approximately 571 employees who work on or with the production lines. Of these employees, 14 are leads and 47 are PMOs. The parties stipulated at hearing that the leads are not supervisors within the meaning of Section 2(11) of the Act. The remaining approximately 510 individuals are general laborers, including forklift drivers, dumpers, corers or cutters, dryer operators, packers, box makers, and palletizers. In addition, on the onion production lines there is a peeler operator who operates the onion peeler machine. Other than lead employees, the general laborers in the Production Department are not offered positions in Salinas after they are laid off at the end of the Yuma season.

The PMOs operate the scale and bagger machines, as well as the metal detectors at the end of each production line. Ninety-five percent of the PMOs are dual-facility employees who travel from Salinas, and all but one of the PMOs are paid a per diem. The non-lead per diem for PMOs is \$850 per month. Dual-facility "lead" employees receive a per diem of \$1000, regardless of their department.

There are also 64 Production Department employees assigned to shipping functions. These include forklift drivers, loaders, "cycle counters" (who are responsible for counting inventory), and order dispatchers. Approximately 72% of these employees are dual-facility employees, but only slightly over half are paid a per diem to travel. The amount of the per diem depends upon the position held. Dispatchers receive \$1,000 per month; loaders, \$850 per month; and rotators, \$600 per month.

(c) Quality Assurance

The 29 quality assurance (QA) employees work throughout the facility's production areas, inspecting, measuring, and testing the produce as it is processed and packaged to ensure that it meets the Employer's standards. QA employees are assigned to general "areas" but not to particular production lines. The QA employees have significant interaction with Production Department employees. For example, they check the weight of the bags and quality of their seal as they emerge from the scale and bagger machines operated by the PMOs. If something is wrong with the product, they work with the PMOs and the leads to correct the problem. The QA employees report to supervisors in the department where they are assigned, and this supervisor in turn reports to Cosme Pina, head of QA. Approximately 40% of the QA employees are dual-facility employees, but only about 27% are paid a per diem for relocating. The non-lead QA per diem is \$600 per month.

(d) Utility and Sanitation

There are 19 individuals who work in the Utility Department. Some of these employees report to the maintenance area, some report to the purchasing department, and some report to other functions. The utility employees perform general labor functions around the facility. There are also 40 Sanitation Department employees, who perform general cleaning services. Approximately 5% of the Utility Department employees and 8% of the Sanitation Department employees are dual-facility employees. No Utility Department employee is paid per diem; 5% of the Sanitation Department employees are paid for their travel.

(e) Engineering

The Engineering Department includes 12 Techs, including 3 leads, and 28 Mechanics, including 3 leads. The Techs repair and maintain the facility's metal detectors and scale and bagger machines, all of which are electronic in nature. They also help train the PMOs. Eighty-three percent of the Techs are dual-facility employees. All receive per diem. Non-lead Techs receive per diem of \$850 per month. The Mechanics maintain and repair the facility's non-electrical equipment. They are not assigned to particular equipment or particular production lines, but repair broken plant machinery, including conveyors, slicers, forklifts, coolers, evaporation systems, pumps, and other equipment requiring mechanical attention, and may be assigned to help fabricate changes to other mechanical installations in the buildings. The Engineering Department also includes tool room attendants, who are less skilled, less experienced Mechanics who work in the tool room. Sixty-seven percent of the Mechanics are dual-facility employees. It appears that all of them receive a per diem. Non-lead Mechanics receive per diem of \$850 per month.

3. The Production Process

The production process begins with the delivery of the raw produce from outside suppliers. The produce arrives in tractor-trailers or flatbed trucks, typically in containers called totes. Receiving Department employees unload the totes with large forklifts and deposit the totes in cooling chambers. QA employees inspect the produce. Next, forklift operators remove the produce and take it to a staging area, where it is prepared for further processing and then picked up and dumped onto a conveyor belt. The dumping line is approximately 20 feet long and rises up to a platform where the cutters are located. Individuals known as dumpers actually lift the totes, which weigh between 40-45 pounds each, and place them on the belt. The belt rises about six or seven feet, with a flip on the end that dumps out the produce. The dumpers are in the Production Department, working on the front end of a typical production line.

Once the lettuce, cabbage, or other produce is dumped out of the totes, it proceeds on the conveyor belt to the next station, which is where lettuce and cabbage is “cored” or cut. Once it is cored and cut, the produce proceeds along the production line to shredding machines. Production Department employees perform the cutting, coring, or shredding function. A QA employee inspects the produce as it moves through the production line. Once the produce moves through the cutters and is shredded or chopped, it automatically drops into a flume system that cools, chlorinates, and sterilizes the product. Next, the produce moves along the production line to a centrifugal dryer that spins the produce, reducing its moisture content.

The produce is then deposited onto a conveyor belt, which transports the produce to a scale and bagger machine operated by a PMO. On each production line, there is one packing machine, operated by a single PMO. A QA employee is also present at the scale and bagging machine, operated by the PMO, in order to inspect the produce to ensure that the packaging is properly sealed and not leaking air. In addition, the QA employee will weigh the product to ensure that the package meets customer specifications. If a bag moving through the scale and bagger machine leaks, a QA person points that out to the PMO, and together they notify the supervisor or lead person responsible for that particular line. There is at least one supervisor and/or lead person assigned to each production line. At that point, the PMO, production lead, and supervisor work to try to fix the problem. If they are unsuccessful, the supervisor contacts the Techs’ supervisor, who sends a Tech out to fix the machine.

Once the products are packaged, they move to the next step of the process, which involves packing the products in cardboard boxes. Typically, Production Department box makers, who are located just above the packing area, construct the boxes and pass them down through a shoot. The Production Department packers then remove the bags from the conveyor belt, pack them in the cardboard boxes, and push them through a taping machine, which seals the cardboard box. Box makers construct the boxes, packers pack the product in cardboard boxes, other individuals seal the boxes, and palletizers place the boxes on the pallets and ready them for shipping. These workers are all assigned to the Production Department. Generally, there are one to two packers assigned to each production line, each

physically located approximately 7 to 8 feet away from the PMO operating the bagger machine.

Shipping Department employees transport the pallets with forklifts to the storage area, where other Shipping Department employees count the product, and loaders load the product onto trucks. If, at any time during the production process, a problem arises with a non-electrical machine (a conveyor, for example), one of the Production Department employees calls a Mechanic to repair the machine.

B. Supervision and Personnel Management

Lewis Wall is the Vice President of Operations, and several managers or supervisors report directly to him, including: Martin Alfaro and Jose Valdez, Production Managers; John Krbechek, Plant Engineer; and Pina, Head of QA. The PMOs report either to Alfaro or Valdez, who also supervise the Production Department employees. In both areas, there are supervisors and leads also assigned to those areas. Depending upon the production line to which they are assigned, PMOs may report to a supervisor or a lead, who in turn may report to a manager who reports to Valdez. The Techs are directly supervised by Packaging Mechanic Supervisor Matias Ramirez. The Mechanics report to Enrique Valle, the Maintenance Manager. Both Valdez and Ramirez report to the Plant Engineer.

Personnel management functions for the employees are provided by a common Human Resources Manager. Every hourly employee hired in Yuma is provided with a Taylor Farms Employee Handbook, asked to review it, and signs an acknowledgement form that is placed in the employee's personnel file. The handbook is distributed to all hourly employees. Notices to employees are also posted on bulletin boards throughout the facility that are generally available to all employees.

C. Wages, Benefits and Other Working Conditions

The employees generally work a standard workweek of either 5 or 6 days. Production employees typically work either 5 or 6 days, depending upon the volume of work in the plant. If the plant is busy, production lines run generally 6 days a week. PMOs and some other production employees, such as dumpers and leads, report to work between one-half hour and an hour prior to the shift start time, usually to prepare the line. Techs and Mechanics generally work 6-day work weeks. They also report earlier and tend to stay for longer shifts, sometimes as much as three to four hours after the production line is down. While the production line operates in two, 8 ½-hour shifts, the Mechanics work in two 12-hour shifts, to provide 24-hour coverage during the set ups for the shift changes.

The employees' hourly wage rates range and per diem compensation is as follows:

| Department | Wage Range |
|-------------------|----------------|
| Quality Assurance | \$7.70 - 11.00 |
| Shipping | 8.50 - 12.10 |
| PMOs | 9.75 - 13.30 |
| Other Production | 7.45 - 7.55 |
| Mechanics | 11.00 - 18.20 |
| Techs | 13.00 - 16.50 |

Overtime is distributed based on order volume on the various production lines. General laborers on the production line typically work five hours of overtime per week. PMOs usually work 10 hours per week overtime; Techs and Mechanics work at least 10 hours per week overtime, and often more. Employee benefits and fringe benefits are identical for the whole workforce with the exception of holidays. Pursuant to the Employee Handbook, the vast majority of PMOs, Techs, and Mechanics receive paid holidays, because they are effectively "year-round" employees, while the non-lead production workers, who are considered "seasonal" do not receive paid holidays.

D. Degree of Skill and Common Functions

General laborers on the production line perform routine, unskilled work, including lifting and dumping containers of product, coring lettuce and cabbage, and feeding the product into the shredding machine. They are trained within the first few days of their employment. General laborers are not expected to have any knowledge of the machinery or the conveyers. There are no qualification requirements for the PMO position, and many general laborers have been promoted to this position. PMOs are trained on the job to operate the pack machine, either by other PMOs or by the Techs. PMOs also receive training from the outside vendors of their machines.

It appears from the record that several of the Techs have had training in electronics prior to working for the Employer. The Techs have their own classroom for training in troubleshooting electrical problems. Techs also receive the outside vendor training received by the PMOs. All Techs are forklift certified. The Mechanics receive training from an outside vendor of air compressors, slicing equipment, and fresh line dryers. All Mechanics are also forklift certified. Both Techs and the Mechanics engage in a significant amount of one-on-one, on-the-job training from their leads and supervisors, to learn the troubleshooting part of their job.

E. Interchange and Transfer

As noted above, the unit sought by the Petitioner contains only a portion of the PMOs, Techs, and Mechanics who work at the Yuma facility, and excludes those who do not travel to Salinas at the end of the season. But for that distinction, these employees perform work *identical* to their traveling counterparts. Thus, there is significant interchange between these groups. By contrast, although it appears that a majority of the Techs and Mechanics is

recruited from production employees, including PMOs, there is no evidence that Techs and Mechanics ever transfer back to the Production Department. Likewise, there is no evidence of temporary interchange between employees of the Maintenance and Production Departments. In fact, when there are not enough Mechanics on duty to make equipment repairs, the Employer engages an outside contractor to do the work.

F. Uniforms and Tools

Other than Techs and Mechanics, all of the employees wear similar work clothes and protective clothing: a white smock, earplugs, gloves, and a white cap. Techs and Mechanics do not wear smocks, but instead wear navy blue shirts, blue pants, hairnets, and blue hats. At hearing, the Employer's witnesses testified that this difference is due to the fact that the Mechanics and Techs are frequently called upon to repair and maintain various equipment, and the smocks would both present a safety hazard and be easily dirtied in their work. Techs and Mechanics carry radios. No non-lead production line workers carry radios.

The employees also wear different-colored hats to indicate their functions. For example, supervisors wear red caps, quality assurance people wear green caps, maintenance Techs and Mechanics wear blue caps, sanitation employees wear yellow caps, and utility employees wear gray caps. The PMOs, as members of the production department, wear exactly the same uniforms as do the packers, dryers, and others working on the various production lines.

Techs and Mechanics are provided a tool allowance of \$300 per year and are granted complete discretion as to how to spend this money. Their tools are stored in their tool shop, which is a separate building from the remainder of the facility. PMOs are issued some minor tools, such as scissors and tape. They also provide some tools of their own, such as screwdrivers, wrenches, and tweezers. The remaining production employees are not issued, and do not use, any tools.

G. Legal Analysis and Determination

Section 9(b) of the Act provides that "the Board shall decide in each case whether to assure to employees fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof." It is well established under Board law that the Act does not require the unit for bargaining be the optimum, or most appropriate unit, but only an appropriate unit. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Overnight Transportation Co.*, 322 NLRB 723 (1996). An appropriate unit insures to employees "the fullest freedom in exercising the rights guaranteed by the Act." *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F. 2d 576 (7th Cir. 1951); *Dinah's Hotel and Apartments*, 295 NLRB 1100 (1989).

In deciding the appropriate unit, the Board first considers the petitioner's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). In determining whether a petitioned-for unit is an appropriate unit, the Board addresses whether the employees share a community of interest. *Home Depot*, supra, 331 NLRB at 1290. In

Home Depot, the Board stated that factors it considers in determining community of interest among different groups of employees include:

differences in method of wages or compensation, hours of work, employment benefits, job functions and amount of working time spent away from the employment or plant situs; infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and history of bargaining.

Id., citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). None of the above factors has controlling weight, and there are no per se rules to include or exclude any classification of employees in any unit. *Airco, Inc.*, 273 NLRB 348, 348 (1984). If the petitioner's unit is not appropriate, the Board may consider an alternative proposal for an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). Here, the Employer proposes a wall-to-wall unit.

Applying the foregoing legal principles to the record before me, I find that the unit proposed by the Petitioner is inappropriate. In reaching this conclusion, I rely on several factors. First, with respect to wages, hours, benefits, work functions, skills, and duties, members of the Petitioner's proposed unit share a significant community of interest with workers the Petitioner has failed to include. The Petitioner has selected a unit composed of certain employees (PMOs, Techs, and Mechanics) who work for the Employer at both its Yuma and Salinas facilities, and who are already represented by the Petitioner when working in Salinas. Not included in this proposed unit are two PMOs, two Techs, and eight Mechanics who, along with the vast majority of the Yuma production employees, work only in Yuma.

While the Petitioner would apparently exclude the "Yuma only" employees as seasonal employees, the evidence reveals that, in fact, all employees who work at the Yuma facility are seasonal employees. Under the established Board law, seasonal employees' entitlement to be included in a bargaining unit turns on whether those employees, at the end of the season, have a reasonable expectation of reemployment with the employer. See *Maine Apple Growers, Inc.*, 254 NLRB 501, 503 (1981). The Yuma facility is open only four months a year, during the Arizona packing season. Employees are hired at the Yuma facility each year during the packing season and laid off each year at the conclusion of the season. With respect to the production employees, the relative lack of skill required to perform the functions of the vast majority of production slots means that the Yuma employment market provides a sufficient number of qualified workers to fill the Employer's labor needs. On the other hand, the higher skill levels necessary to perform the maintenance functions have led the Employer to resort to other means to fill these positions. To fulfill its maintenance requirements, the Employer offers a substantial number of Salinas maintenance department employees monetary incentives to induce them to apply for work in Yuma each year. As a consequence, from year-to-year, the vast majority of the maintenance positions in Yuma are filled with employees whom the Employer has laid off at its Salinas facility. Each year at Yuma, the Employer supplements the workforce from Salinas with employees hired from the Yuma employment market. Although the record is not clear to what extent employees from the Yuma market return to work for the Employer each year, the record does reveal that the

Employer attempts to induce their continued employment by offering them positions during the Yuma off season at the Employer's Salinas facility. Thus, the consistent use of the Yuma market to supplement employees drawn from its Salinas facility demonstrates the Employer's reliance on maintenance employees from the Yuma market and legitimizes these employees' expectation of reemployment. *Baumer Foods, Inc.*, 190 NLRB 690 (1971) (where employer draws from the same labor market each year for seasonally laid-off employees, such employees have a reasonable expectation of rehire). Overall, these practices of the Employer evidence "the existence of a relatively stabilized demand for, and dependence on, such employees by the Employer and, likewise, a reliance on such employment by a substantial number of employees in the labor market who return to the Employer's operation each year." *California Vegetable Concentrates, Inc.*, 137 NLRB 1779 (1962) (seasonal employees of vegetable processing plant are properly included in unit where a "substantial number" of them are regularly reemployed from year-to-year).

By contrast, the Employer does not recruit the vast majority of its Yuma production employees from its Salinas facility and provides no incentives for them to apply for work in Yuma. Nor does the Employer offer Yuma employees the opportunity to work during the Yuma off-season at the Employer's Salinas facility. There is also no evidence that the Yuma production employees are actually reemployed season-to-season. In these circumstances, their inclusion in the unit is inappropriate. See *L&B Cooling, Inc.*, 267 NLRB 1 (1983) (where employer simply hired seasonal production workers from those who might be available and did not encourage these employees to reapply for employment, their inclusion in unit of regular, seasonal employees is inappropriate).

As stated above, all of the employees who work at the Yuma facility are seasonal employees. I do not find that the fact that some employees also work for the Employer in Salinas during the Yuma off-season provides a significant enough distinction among them to make them constitute separate appropriate units for the purpose of collective bargaining, given their otherwise strong community of interest. Indeed, I find that the Petitioner's unit of "year-round" employees appears to present a classic case of a petitioned-for unit which is based primarily on the Petitioner's "extent of organization." The Act prohibits such units, and the Board has accordingly rejected attempts to represent them. In this regard, this case is controlled by *NLRB v. Lundy Packing Co.*, 68 F.3d 1577 (4th Cir. 1995), cert. denied 518 U.S. 1019 (1996), in which the court denied enforcement of a Board order, because it found that the bargaining unit determination in *Lundy Packing Co.*, 314 NLRB 1042 (1994), violated Section 9(c)(5). The court found, contrary to the Board, that certain quality control employees and lab technicians shared a sufficient community of interest with employees in a production and maintenance unit to include them in that unit. The court faulted the Board's finding that the quality control employees and lab technicians were not required to be included in the production and maintenance unit, because they lacked an "overwhelming community of interest" with the production and maintenance employees. *Lundy Packing*, 68 F.3d at 1581, citing 314 NLRB at 1043. The court found that "given the community of interest between the included and excluded employees here, it is impossible to escape the conclusion that the [quality control employees'] ballots were excluded 'in large part because Petitioners do not seek to represent them.'" *Id.*, citing Member Stephens' dissent.

Having now found that an appropriate unit must include both employees hired from the Yuma employment market and those recruited from Salinas, I turn to those who should be specifically included in the unit. The Petitioner attempts to include PMOs in the unit. However, the inclusion of PMOs in the unit presents additional community of interest problems. The PMOs share a supervisory chain of command with production employees, not the Techs and Mechanics. They also work on the production line, have significant interaction with production employees, and wear uniforms similar to those employees. Their wages are most similar to those of production leads, and they are recruited from regular Production Department employees. While PMOs may attempt minor repairs on their machines, they do not perform actual maintenance functions. Although PMOs may, in very limited circumstances, occasionally assist the Mechanics and Techs in effecting repairs, these activities do not effectively convert them into maintenance employees. See *Verona Dyestuff Division*, 225 NLRB 1159, 1161 (1976) (production department employees who are often used as “helpers” to maintenance employees retain their distinct status as production employees).

In addition, there is a lack of significant contact between production and maintenance employees. Once a maintenance employee has been called to fix a particular machine, the maintenance employee reports to the machine and undertakes the repairs without consulting with the PMO, except perhaps for a brief explanation of the problem by the PMO. Likewise, there is no record evidence of employee interchange between these two groups. While the record shows that there have been permanent transfers from production to maintenance, there have been no transfers from maintenance to production. See *Warner-Lambert Co.*, 298 NLRB 993 (1990) (permanent transfer by production employees into packing machine mechanics positions does not establish community of interest, where packing machine mechanics did not transfer into production positions). Moreover, there is no record evidence of temporary transfers between maintenance and production employees. These factors in my view are crucial. In *J & L Plate*, 310 NLRB 429, 430 (1993), the Board explained that the evidence of minimal interchange and lack of meaningful contact between employees in the requested unit and comparable employees outside the unit diminished the significance of other factors such as the functional integration between the facilities and a distance between the facilities. The Board has found a low level of interchange among groups of employees indicative of a separate community of interest. *American Security Corporation*, 321 NLRB 1145, 1146 (1996); *Executive Resources Associates*, 301 NLRB 400, 401 (1991). See also *Birdsall, Inc.*, 268 NLRB 186, 191-92 (1983) (Board declined to include in warehouse unit employees engaged in traffic, data processing, insurance, and administration departments where these latter employees had little or no contact or interchange with the warehouse employees).

Having found the petitioned-for unit inappropriate, I turn to the Employer’s proposed unit. The record reveals that the Employer’s “wall-to-wall” unit would effectively combine about 550 unskilled, seasonal production line workers who make an average of \$7.50 per hour, with 29 dual-facility employees who, when their per diem is taken into account, make between two and three times that amount, are specially trained, and who have little or no interchange or interaction with the production line employees. Instead, I find a distinct unit of all regular, seasonal Mechanics and Techs employed by the Employer at its Yuma facility to

be an appropriate unit, for the reasons stated below. This unit contains identical classifications to the unit sought by the Petitioner with the exceptions that PMOs are excluded, having an insufficient community of interest to be included in such a unit, and the non-traveling Mechanics and Techs are included, having a substantial community of interest with their traveling counterparts.

The Board will find a separate maintenance department unit appropriate where the facts of the case demonstrate the absence of a more comprehensive bargaining history and the maintenance employees have the requisite community of interest. *Sundor Brands, Inc.*, 334 NLRB No. 100 (2001), citing *American Cyanamid Co.*, 131 NLRB 909 (1961). In determining whether a sufficient separate community of interest exists among maintenance department employees, the Board examines such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. The *American Cyanamid* Board pointed out that “[w]hile many factors may be common to most situations . . . the effect of any one factor, and therefore the weight to be given it in making the unit determination, will vary from industry to industry and from plant to plant.” *Id.* at 911. Thus, “collective-bargaining units must be based upon all the relevant evidence in each individual case.” *Id.*; see also *U.S. Plywood-Champion Papers*, 174 NLRB 292 (1969).

Significantly, the Board does not require all factors to be present in order to find a maintenance unit appropriate, so long as the record establishes that “maintenance employees are readily identifiable as a group whose similarity of function and skills create a community of interest such as would warrant separate representation.” *American Cyanamid*, *supra* at 910. Here, the Board’s rationale as expressed in *American Cyanamid* applies with equal force: “[t]he record in this case fails to establish that the Employer’s operation is so integrated . . . that maintenance has lost its identity as a function separate from production, and that maintenance department employees are not separately identifiable. . . . They perform the varied maintenance work for the entire plant exercising the particular skills required for this function.” *Id.*

As a preliminary matter, the maintenance employees are far more highly paid than the production workers. In such circumstances, the Board has on many occasions found a maintenance-only unit appropriate. For example, in *Ore-Ida Foods, Inc.*, 313 NLRB 1016 (1994), the Board found maintenance unit appropriate where, despite shared wage rates, fringe benefits, and conditions of employment with production employees, the maintenance employees commanded the highest wages. Likewise, in *Oscar Meyer & Co.*, 172 NLRB 1471 (1968), the Board found a maintenance unit appropriate where the maintenance employees’ wage scale was about 20 percent higher than that of the production employees, and they were treated differently for purposes of layoff and recall. The Board again approved a maintenance-only unit in *Phillips Products Co.*, 234 NLRB 323, 323 (1978), based on its finding that “tool repair and maintenance employees have the highest skills at the plant and receive the highest wages.”

Applying these principles, I find that a maintenance-only unit is appropriate in this proceeding. Thus, the Techs and Mechanics are separately supervised and have a higher skill level than the production employees. They receive much more extensive training. They are also paid at a higher wage rate. That the Techs and Mechanics are considered more highly skilled is evidenced by the fact that they *all* receive offers and incentives to work at both of the Employer's facilities, including paid airline travel between the locations and per diem compensation for their relocation expenses. Under very similar circumstances, the Board has found a maintenance-only unit appropriate. See, e.g., *Warner-Lambert Co.*, supra at 994 (packing machine mechanics appropriately included in maintenance unit, where they were not laid off with production workers, but continued to work during the off-season); *Capri Sun Inc.*, 330 NLRB No. 158 (2000) (finding unit of maintenance employees appropriate where, unlike production employees, they were not subject to layoff procedures). Certainly, as the "core" group of dual-facility employees, for whom the Employer offers special incentives and higher wages, the Techs and Mechanics have an identity distinct from the unskilled Yuma production line workers whom the Employer lays off after each season.

As to work integration, except for the fact that the maintenance employees repair the equipment used by the production employees, there appears to be no other significant overlap of work between the groups, and, therefore, no functional integration of maintenance employees with the work function of the production employees. Although there was testimony of some limited circumstances in which a production department employee may "assist" a mechanic or a Tech, this is limited to providing extra muscle to affect a repair, for example, to load a new saw blade onto a machine. Such unskilled "lending a hand" is not evidence of interchange between the groups. *Yuengling Brewing Co.*, 333 NLRB 892 (2001); *Verona Dyestuff*, supra (production employees who act as "helpers" to maintenance employees does not amount to functional integration between the two groups). Likewise, the fact that PMOs occasionally perform minor repairs on their own equipment does not require the inclusion of production workers with maintenance employees. *Yuengling Brewing*, supra.

Citing *Boeing Co.*, 337 NLRB 152 (2001), the Employer contends that there is functional integration of the production and maintenance employees mandating their inclusion in the same unit. I find *Boeing* to be distinguishable from the circumstances presented here. In *Boeing*, the union sought to represent only a unit of employees working in the employers' RAM unit, a group responsible for repairing, inspecting, and maintaining aircraft engines at an Air Force base in Charleston, South Carolina. The employer contended that the only appropriate unit was one that included all of its Charleston-based employees, including employees working in the ESE unit, a group responsible for maintaining, inspecting, and repairing the support equipment used by the RAM employees, and employees working in the ROR unit, a group responsible for storing all of the parts and materials needed to repair aircraft. The Board concluded that the RAM employees did not possess a community of interest separate and distinct from the ESE and ROR employees that would justify a separate unit of RAM employees. In reaching its decision in *Boeing*, the Board found that the ESE employees had the same skills, qualifications, and certifications as the RAM employees. That is not the case in the instant matter where, for instance, the production employees, unlike the maintenance employees, are not required to undergo extensive training, work for significantly

lower wages, or where the potential cost of replacing them is not enough to justify offering them year-round work, paid travel and per diems to work at the Employer's other facility.

As to bargaining history, the Employer argues that a wall-to-wall unit is appropriate in Yuma because that is the bargaining unit recognized by the Employer in Salinas. I find this contention unpersuasive. The Salinas unit was not the result of a Board determination but, rather, the result of the parties' stipulated election agreement. There is nothing inconsistent about certifying a unit in Yuma that happens to be different from that in Salinas. See *Overnite Transportation Co.*, 322 NLRB 723 (1996) (finding different appropriate units at two locations of employer). "The Board does not require a union to seek the same unit at different locations of the same employer, even where there is a collective-bargaining history in a broader unit at the other locations." *Id.* (citing *Big Y Foods*, 238 NLRB 855, 857, *enfd.* 651 F.2d 40, 46-47 (1st Cir 1981)). "[I]t is not the Board's function to compel all employees to be represented or unrepresented at the same time or to require that a labor organization represent employees it does not wish to represent, unless an appropriate unit does not otherwise exist." *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 701 (1967), quoting *Ballentine Packing Co.*, 132 NLRB 923, 925 (1961).

While normally the category of eligible employees would be those employed during the payroll period ending immediately preceding the date of the direction of the election, the seasonal nature of the Yuma facility requires that I modify this criterion to allow the greatest number of maintenance department employees to participate in the election. As I have noted, once the Yuma operation begins each year, the employee complement is relatively stable throughout the season. Since the petition was filed well after the Employer's recent Yuma operations began (in approximately November 2003), and well before the scheduled end of that season (late March/early April 2004), the petition filing date will serve as a reasonable "snapshot" of the workforce for eligibility purposes.

Based upon the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All regular, seasonal Packing Machine Technicians and Mechanics employed at the Employer's Yuma, Arizona facility.

EXCLUDED: All other employees, including office clerical employees, and guards and supervisors as defined in the Act.

There are approximately 40 employees in the unit found appropriate.

DIRECTION OF ELECTION

With respect to elections among seasonal employees, it is normal Board practice to direct the holding of the election at or near the peak of the season, to ensure that the maximum number of employees are allowed the opportunity to vote. See *Bogus Basin Recreation Assn.*, 212 NLRB 833 (1974); *Libby, McNeill & Libby*, 90 NLRB 279 (1950). Where, as here, an

employer maintains its operation on a year-round basis, albeit at different facilities, it is appropriate to conduct an election at any time when a substantial portion of the complement of its employees, that are engaged in the year-round operation, are on the payroll. See *Broyhill Co.*, 528 F.2d 719 (1976) (directing election of year-round and regular seasonal employees where approximately 70 percent of “peak season” work force was on the payroll as of the date of representation hearing), enfg. 215 NLRB 372 (1974); see also *Elsa Canning Co.*, 154 NLRB 1810 (1965) (where employer maintains year-round operation, it is not necessary to postpone election to “annual peak of employment as is usually done in seasonal industries which operate during a certain portion of the year”). Accordingly, I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board’s Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding February 17, 2004, including employees who did not work during that period because they were ill or on vacation. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**GENERAL TEAMSTERS, WAREHOUSE AND HELPERS
UNION, LOCAL 890, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. I will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, I must receive the list at the NLRB Region 28 Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004, on or before April 27, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by May 4, 2004. A copy of the request for review should also be served on me.

Dated at Phoenix, Arizona, this 20th day of April 2004.

Cornele A. Overstreet
Regional Director
National Labor Relations Board